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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO.

UNDERWRITERS AT LLOYDS LONDON,
ANDREW WEIR INSURANCE CO., LTD.,
FINE ART & GENERAL INSURANCE CO., LTD.,
NATIONAL PROVINCIAL INSURANCE CO., LTD.,
ORION INSURANCE COMPANY, LTD.,
ENGLISH & AMERICAN INSURANCE CO., LTD.,
"M", and ECONOMIC INSURANCE COMPANY,
LTD., "M" a/c,

Petitioners

versus

ALCOA STEAMSHIP COMPANY, INC., ET AL.

Respondent

OPPOSITION OF CHARLES FERRAN & CO., INC. and GLENS FALLS INSURANCE COMPANY TO THE PETITION FOR A WRIT OF CERTIORARI

Now come Charles Ferran Co., Inc. and Glens Falls Insurance Company, respondents, and oppose the granting of a writ of certiorari herein for the reasons set forth below.

QUESTION PRESENTED

Respondents disagree with the "Questions Presented" in the petition. The only issue involved is the proper interpretation of a primary and an excess liability insurance policy. No substantial questions of law are presented for review.

STATEMENT OF THE CASE

This case arose out of a fire, which occurred on S/S ALCOA CORSAIR while she was under repair by Charles Ferran Co., Inc. (Ferran). Alcoa Steamship Company (Alcoa) as owner of the ALCOA CORSAIR brought suit against Ferran and its primary (Glens Falls Insurance Company) and excess (London) ship repairer's legal liability underwriters to recover damages resulting from the fire. Damages were claimed to be in excess of $1,000,000. In two opinions (242 F. Supp. 292 and 251 F. Supp. 823) the District Court found Ferran to have been negligent in starting the fire, held the "Red Letter Clause" in the repair-contract between Alcoa and Ferran (which limited Ferran's liability to $300,000) to be valid, and referred the determination of the damages to a Special Master. An appeal followed to the United States Court of Appeals for the Fifth Circuit, which affirmed the judgment of the District Court (383 F. 2d 46). An application by Alcoa for a writ on the issue as to the validity of the Red Letter Clause was denied.

Glens Falls Insurance Company had issued the policy of ship repairer's legal liability insurance to Ferran in the amount of $300,000 and London underwriters, petitioners here, had issued excess insurance on the same risks in an amount sufficient to cover Alcoa's claim.

Following the denial of Alcoa's application for a writ of certiorari and during hearings conducted by the Master, Glens Falls paid the limits of its policy, namely $300,000, which was the same amount as the Red Letter Clause limitation. After further hearings, the Master issued a report holding that the Red Letter Clause did not preclude recovery of interest on the maximum amount re-

coverable, and that such interest should be paid by Ferran and/or its primary underwriters. The report was adopted by the District Court. A second appeal then followed. The Court of Appeals held, first, that despite the limitation of the Red Letter Clause, Ferran was liable for interest in addition to $300,000, and, insofar as here pertinent, that under the terms of the primary and excess policies such interest should be paid by Excess underwriters. Its opinion is not yet reported, but is reproduced as Appendix A to the petition.

ARGUMENT

We have no quarrel with petitioners' position that the allowance of interest in admiralty is discretionary, but that is not the issue involved here. The District Court and the Court of Appeals both exercised their discretion to allow interest against Ferran. The question is — which of Ferran's underwriters, primary or excess, should pay the interest.

Possibly the situation is confused by the fact that both primary and excess underwriters were sued under the provisions of Louisiana Direct Action Statute (22 La. R. S. 655). Despite this statute, the relationship of the parties remains the same. There is no question that Ferran is responsible for interest under the terms of the existing judgment, and there is no question that one of Ferran's underwriters is responsible for Ferran's obligation. The issue then becomes one of policy or contract construction as between primary and excess underwriters. This issue is fully covered in the opinion of the Court of Appeals and was, we submit, correctly decided.

The application for a writ herein does not involve

any substantial federal questions or any constitutional issues despite petitioners' attempt to frame the "QUESTIONS PRESENTED" in such guise, nor does the application involve any of the considerations set forth in Rule 19 of this Court's rules. As mentioned above the issue is a narrow one of policy construction which was adequately and properly dealt with by the Court of Appeals and there is no reason for this Court to disturb this judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have on this day of , 1971, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.